

FILED

OCT 20 2005

**CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____**

DEPUTY CLERK

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16 [ADDITIONAL COUNSEL ON SIGNATURE PAGE]

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

19 NATURAL RESOURCES DEFENSE COUNCIL, *et al.*,) Case No.
20 Plaintiffs,) CIV-S-88-1658 LKK/GGH
21 v.)
22 KIRK RODGERS, as Regional Director of the) STIPULATION RE
23 UNITED STATES BUREAU OF RECLAMATION,) CONFIDENTIALITY FOR
24 *et al.*,) DISCUSSIONS WITH SELECTED
25 Defendants,) EXPERTS RE SETTLEMENT
26 ORANGE COVE IRRIGATION DISTRICT, *et al.*,)
27 Defendants-Intervenors.)

1 Plaintiffs Natural Resources Defense Council, *et al.* ("Plaintiffs"), defendants Kirk Rogers, *et*
2 *al.* (the "Federal Defendants") and Orange Cove Irrigation District, *et al.* (the "Friant Defendants")
3 (collectively, "the Parties"), by and through respective attorneys of record, hereby stipulate and agree
4 as follows:

5 1. Pursuant to the Court's Discovery Plan Order and Schedule and Rule 26 of the Federal
6 Rules of Civil Procedure, the Parties have designated expert witnesses and are engaged in the
7 preparation for depositions of expert witnesses.

8 2. Plaintiffs and the Friant Defendants have engaged in preliminary discussions regarding
9 the potential settlement of this matter. The Federal Defendants may join such discussions at some
10 point in the future.

11 3. To proceed further with such settlement discussion, Plaintiffs and the Friant Defendants
12 believe it is necessary to discuss certain issues with certain of their respective designated expert
13 witnesses. Although not yet parties to these discussions, the Federal Defendants may have similar
14 concerns should they participate in such discussions in the future.

15 4. To enable such discussions to take place, and not to have such discussions become the
16 subject of discovery or other disclosure or put to any other evidentiary use in this case or any other
17 proceeding, the Parties agree as follows:

18 (a) Discussions and the exchange of information between the Parties (including their
19 counsel and agents) and the designated expert witnesses identified in Paragraph 4(b) below (including
20 communications between the designated expert witnesses among themselves) shall be deemed to be
21 privileged and confidential to the same extent as if the attorney-client privilege and work product
22 doctrine applied to such communications and notwithstanding any other statutory and decisional law
23 to the contrary; and

(b) The protections against disclosure provided by this Stipulation, as provided herein, shall apply only to communications relating directly to settlement negotiations which occur on or after October 6, 2005 and prior to the conclusion of the remedy trial of this matter, unless this Stipulation is terminated earlier in accordance with terms hereof, and involve the following designated expert witnesses: Dr. Peter Moyle, Dr. Mathias Kondolf, Dr. Charles Hanson, Dr. Michael Harvey, Edward Donahue, Peter Hradelik, Daniel Steiner, and other witnesses as specifically agreed to in advance by the Parties, including expert witnesses designated by the Federal Defendants.

5. This Stipulation may be terminated by any Party hereto after the expiration of five (5) days advance written notice thereof to the attorneys of record for each Party hereto. In such event, the protections of this Stipulation shall still apply to communications occurring prior to the effective date of termination, and the termination shall be effective only as to the Party giving notice of termination.

6. This Court shall have exclusive jurisdiction to enforce this Stipulation.

7. In any proceeding to enforce this Stipulation, the prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees except, as to the Federal Defendants, only to the extent provided by applicable law.

SIGNATURES ON FOLLOWING PAGE

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Dated: October 1, 2005

SHEPPARD MULLIN RICHTER & HAMPTON, LLP

By:

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3 Dated: October 17, 2005

PHILIP F. ATKINS-PATTENSON
Attorney for Plaintiffs

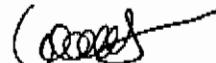
4 By: BEST BEST & KRIEGER LLP
5 GREGORY K. WILKINSON
6 Attorney for Friant Defendants

7 Dated: October 17, 2005

8 By: U.S. DEPT. OF JUSTICE
9 DAVID B. GLAZER
10 Attorney for Federal Defendants

11 IT IS SO ORDERED.*
12

13 OCT 20 2005

14 
15 GREGORY G. HOLLOWSS

16 GREGORY G. HOLLOWSS
17 United States Magistrate Judge

- 18 * The undersigned understands in signing this order that (a) evidence
19 (written or verbal) constituting communications between the parties
20 regarding settlement, (b) informational evidence created for the
purpose of settlement communications/negotiations, or (c) evidence of
memorializations of settlement communications/negotiations, are
21 intended to be encompassed and made privileged by this order. The
undersigned does not understand that the parties intended to make
22 privileged, previously unprivileged evidence, simply because it was
used in settlement negotiations. However, the manner of its use in
23 settlement negotiations would be encompassed by this order.